

AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 931

Introduced by Assembly Member Irwin
(Principal coauthor: Assembly Member Brough)

February 26, 2015

An act to amend Sections 17053.73 and 23626 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL’S DIGEST

AB 931, as amended, Irwin. Taxation: credit: hiring.

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws, including, for taxable years beginning on or after January 1, 2014, and before January 1, 2021, a credit for hiring qualified full-time employees within specified economic development areas. Existing law defines “qualified full-time employee” to include an individual who is a veteran who separated from service in the Armed Forces of the United States within the 12 months preceding commencement of employment with the qualified taxpayer.

This bill would, under both laws for taxable years beginning on or after January 1, ~~2015~~, 2016, revise this definition of a “qualified full-time employee” to include a person who, upon commencement of employment with the qualified taxpayer, is a veteran that separated from service in the Armed Forces of the United States within the ~~24~~ 36 months preceding commencement of employment with the qualified taxpayer.

Existing law also allows a credit against tax under both laws for each taxable year beginning on or after January 1, 2014, and before January

1, 2025, in an amount as provided in a written agreement between the Governor's Office of Business and Economic Development and the taxpayer, agreed upon by the California Competes Tax Credit Committee, and based on specified factors, including the number of jobs the taxpayer will create or retain in the state and the amount of investment in the state by the taxpayer. Existing law limits the aggregate amount of credits allocated to taxpayers to a specified sum per fiscal year and provides that the amount available for these credits will decrease based in part, on how much credit is allowed under the hiring credit that would be expanded by this bill.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17053.73 of the Revenue and Taxation
- 2 Code is amended to read:
- 3 17053.73. (a) (1) For each taxable year beginning on or after
- 4 January 1, 2014, and before January 1, 2021, there shall be allowed
- 5 to a qualified taxpayer that hires a qualified full-time employee
- 6 and pays or incurs qualified wages attributable to work performed
- 7 by the qualified full-time employee in a designated census tract
- 8 or economic development area, and that receives a tentative credit
- 9 reservation for that qualified full-time employee, a credit against
- 10 the "net tax," as defined in Section 17039, in an amount calculated
- 11 under this section.
- 12 (2) The amount of the credit allowable under this section for a
- 13 taxable year shall be equal to the product of the tentative credit
- 14 amount for the taxable year and the applicable percentage for ~~that~~
- 15 *the* taxable year.
- 16 (3) (A) If a qualified taxpayer relocates to a designated census
- 17 tract or economic development area, the qualified taxpayer shall
- 18 be allowed a credit with respect to qualified wages for each
- 19 qualified full-time employee *who is* employed within the new
- 20 location only if the qualified taxpayer provides each employee at

1 the previous location or locations a written offer of employment
2 at the new location in the designated census tract or economic
3 development area with comparable compensation.

4 (B) For purposes of this paragraph, “relocates to a designated
5 census tract or economic development area” means an increase in
6 the number of qualified full-time employees, employed by a
7 qualified taxpayer, within a designated census tract or tracts or
8 economic development areas within a 12-month period in which
9 there is a decrease in the number of full-time employees, employed
10 by the qualified taxpayer in this state, but outside of designated
11 census tracts or economic development areas.

12 (C) This paragraph shall not apply to a small business.

13 (4) The credit allowed by this section may be claimed only on
14 a timely filed original return of the qualified taxpayer and only
15 with respect to a qualified full-time employee for whom the
16 qualified taxpayer has received a tentative credit reservation.

17 (b) For purposes of this section:

18 (1) The “tentative credit amount” for a taxable year shall be
19 equal to the product of the applicable credit percentage for each
20 qualified full-time employee and the qualified wages paid by the
21 qualified taxpayer during the taxable year to that qualified full-time
22 employee.

23 (2) The “applicable percentage” for a taxable year shall be equal
24 to a fraction, the numerator of which is the net increase in the total
25 number of full-time employees employed in this state during the
26 taxable year, determined on an annual full-time equivalent basis,
27 as compared with the total number of full-time employees
28 employed in this state during the base year, determined on the
29 same basis, and the denominator of which shall be the total number
30 of qualified full-time employees employed in this state during the
31 taxable year. The applicable percentage shall not exceed 100
32 percent.

33 (3) The “applicable credit percentage” means the credit
34 percentage for the calendar year during which a qualified full-time
35 employee was first employed by the qualified taxpayer. The
36 applicable credit percentage for all calendar years shall be 35
37 percent.

38 (4) “Base year” means the 2013 taxable year, except in the case
39 of a qualified taxpayer who first hires a qualified full-time
40 employee in a taxable year beginning on or after January 1, 2015,

1 the base year means the taxable year immediately preceding the
2 taxable year in which ~~a~~ *the* qualified full-time employee was first
3 hired by the qualified taxpayer.

4 (5) “Acquired” includes any gift, inheritance, transfer incident
5 to divorce, or any other transfer, whether or not for consideration.

6 (6) “Annual full-time equivalent” means either of the following:

7 (A) In the case of a full-time employee paid hourly qualified
8 wages, “annual full-time equivalent” means the total number of
9 hours worked for the qualified taxpayer by the employee, not to
10 exceed 2,000 hours per employee, divided by 2,000.

11 (B) In the case of a salaried full-time employee, “annual
12 full-time equivalent” means the total number of weeks worked for
13 the qualified taxpayer by the employee divided by 52.

14 (7) “Designated census tract” means a census tract within the
15 state that is determined by the Department of Finance to have a
16 civilian unemployment rate that is within the top 25 percent of all
17 census tracts within the state and has a poverty rate within the top
18 25 percent of all census tracts within the state, as prescribed in
19 Section 13073.5 of the Government Code.

20 (8) “Economic development area” means either of the following:

21 (A) A former enterprise zone. For purposes of this section,
22 “former enterprise zone” means an enterprise zone designated and
23 in effect as of December 31, 2011, any enterprise zone designated
24 during 2012, and any revision of an enterprise zone prior to June
25 30, 2013, under former Chapter 12.8 (commencing with Section
26 7070) of Division 7 of Title 1 of the Government Code, as in effect
27 on December 31, 2012, excluding any census tract within an
28 enterprise zone that is identified by the Department of Finance
29 pursuant to Section 13073.5 of the Government Code as a census
30 tract within the lowest quartile of census tracts with the lowest
31 civilian unemployment and poverty.

32 (B) A local agency military base recovery area designated as
33 of the effective date of the act adding this subparagraph, in
34 accordance with Section 7114 of the Government Code.

35 (9) “Minimum wage” means the wage established pursuant to
36 Chapter 1 (commencing with Section 1171) of Part 4 of Division
37 2 of the Labor Code.

38 (10) (A) “Qualified full-time employee” means an individual
39 who meets all of the following requirements:

1 (i) Performs at least 50 percent of his or her services for the
2 qualified taxpayer during the taxable year in a designated census
3 tract or economic development area.

4 (ii) Receives starting wages that are at least 150 percent of the
5 minimum wage.

6 (iii) Is hired by the qualified taxpayer on or after January 1,
7 2014.

8 (iv) Is hired by the qualified taxpayer after the date the
9 Department of Finance determines that the census tract referred
10 to in clause (i) is a designated census tract or that the census tracts
11 within a former enterprise zone are not census tracts with the lowest
12 civilian unemployment and poverty.

13 (v) Satisfies either of the following conditions:

14 (I) Is paid qualified wages by the qualified taxpayer for services
15 not less than an average of 35 hours per week.

16 (II) Is a salaried employee and was paid compensation during
17 the taxable year for full-time employment, within the meaning of
18 Section 515 of the Labor Code, by the qualified taxpayer.

19 (vi) Upon commencement of employment with the qualified
20 taxpayer, satisfies any of the following conditions:

21 (I) Was unemployed for the six months immediately preceding
22 employment with the qualified taxpayer. In the case of an
23 individual ~~that~~ *who* completed a program of study at a college,
24 university, or other postsecondary educational institution, received
25 a baccalaureate, postgraduate, or professional degree, and was
26 unemployed for the six months immediately preceding employment
27 with the qualified taxpayer, that individual must have completed
28 that program of study at least 12 months prior to the individual's
29 commencement of employment with the qualified taxpayer.

30 (II) (ia) ~~For taxable years~~ *each taxable year* beginning on or
31 after January 1, 2014, and before January 1, ~~2015, 2016~~, is a
32 veteran who separated from service in the Armed Forces of the
33 United States within the 12 months preceding commencement of
34 employment with the qualified taxpayer.

35 (ib) ~~For taxable years~~ *each taxable year* beginning on or after
36 January 1, ~~2015, 2016~~, is a veteran who separated from service in
37 the Armed Forces of the United States within the ~~24~~ 36 months
38 preceding commencement of employment with the qualified
39 taxpayer.

1 (III) Was a recipient of the credit allowed under Section 32 of
2 the Internal Revenue Code, relating to earned income, as applicable
3 for federal purposes, for the previous taxable year.

4 (IV) Is an ex-offender previously convicted of a felony.

5 (V) Is a recipient of either CalWORKs, in accordance with
6 Article 2 (commencing with Section 11250) of Chapter 2 of Part
7 3 of Division 9 of the Welfare and Institutions Code, or general
8 assistance, in accordance with Section 17000.5 of the Welfare and
9 Institutions Code.

10 (B) An individual may be considered a qualified full-time
11 employee only for the period of time commencing with the date
12 the individual is first employed by the qualified taxpayer and
13 ending 60 months thereafter.

14 (11) (A) “Qualified taxpayer” means a person or entity engaged
15 in a trade or business within a designated census tract or economic
16 development area that, during the taxable year, pays or incurs
17 qualified wages.

18 (B) In the case of any pass-thru entity, the determination of
19 whether a taxpayer is a qualified taxpayer under this section shall
20 be made at the entity level and any credit under this section or
21 Section 23626 shall be allowed to the pass-thru entity and passed
22 through to the partners and shareholders in accordance with
23 applicable provisions of this part or Part 11 (commencing with
24 Section 23001). For purposes of this subdivision, the term
25 “pass-thru entity” means any partnership or “S” corporation.

26 (C) “Qualified taxpayers” shall not include any of the following:

27 (i) Employers that provide temporary help services, as described
28 in Code 561320 of the North American Industry Classification
29 System (NAICS) published by the United States Office of
30 Management and Budget, 2012 edition.

31 (ii) Employers that provide retail trade services, as described
32 in Sector 44-45 of the North American Industry Classification
33 System (NAICS) published by the United States Office of
34 Management and Budget, 2012 edition.

35 (iii) Employers that are primarily engaged in providing food
36 services, as described in Code 711110, 722511, 722513, 722514,
37 or 722515 of the North American Industry Classification System
38 (NAICS) published by the United States Office of Management
39 and Budget, 2012 edition.

1 (iv) Employers that are primarily engaged in services as
2 described in Code 713210, 721120, or 722410 of the North
3 American Industry Classification System (NAICS) published by
4 the United States Office of Management and Budget, 2012 edition.

5 (v) (I) An employer that is a sexually oriented business.

6 (II) For purposes of this clause:

7 ~~(aa)~~

8 (ia) “Sexually oriented business” means a nightclub, bar,
9 restaurant, or similar commercial enterprise that provides for an
10 audience of two or more individuals live nude entertainment or
11 live nude performances where the nudity is a function of everyday
12 business operations and where nudity is a planned and intentional
13 part of the entertainment or performance.

14 ~~(ab)~~

15 (ib) “Nude” means clothed in a manner that leaves uncovered
16 or visible, through less than fully opaque clothing, any portion of
17 the genitals or, in the case of a female, any portion of the breasts
18 below the top of the areola of the breasts.

19 (D) Subparagraph (C) shall not apply to a taxpayer that is a
20 “small business.”

21 (12) “Qualified wages” means those wages that meet all of the
22 following requirements:

23 (A) (i) Except as provided in clause (ii), that portion of wages
24 paid or incurred by the qualified taxpayer during the taxable year
25 to each qualified full-time employee that exceeds 150 percent of
26 minimum wage, but does not exceed 350 percent of minimum
27 wage.

28 (ii) (I) In the case of a qualified full-time employee employed
29 in a designated pilot area, that portion of wages paid or incurred
30 by the qualified taxpayer during the taxable year to each qualified
31 full-time employee that exceeds ten dollars (\$10) per hour or an
32 equivalent amount for salaried employees, but does not exceed
33 350 percent of *the* minimum wage. For qualified full-time
34 employees described in the preceding sentence, clause (ii) of
35 subparagraph (A) of paragraph (10) is modified by substituting
36 “ten dollars (\$10) per hour or an equivalent amount for salaried
37 employees” for “150 percent of the minimum wage.”

38 (II) For purposes of this clause:

39 ~~(aa)~~

1 (ia) “Designated pilot area” means an area designated as a
2 designated pilot area by the Governor’s Office of Business and
3 Economic Development.

4 ~~(ab)~~

5 (ib) Areas that may be designated as a designated pilot area are
6 limited to areas within a designated census tract or an economic
7 development area with average wages less than the statewide
8 average wages, based on information from the Labor Market
9 Division of the Employment Development Department, and areas
10 within a designated census tract or an economic development area
11 based on high poverty or high unemployment.

12 ~~(ae)~~

13 (ic) The total number of designated pilot areas that may be
14 designated is limited to five, one or more of which must be an area
15 within five or fewer designated census tracts within a single county
16 based on high poverty or high unemployment or an area within an
17 economic development area based on high poverty or high
18 unemployment.

19 ~~(ad)~~

20 (id) The designation of a designated pilot area shall be applicable
21 for a period of four calendar years, commencing with the first
22 calendar year for which the designation of a designated pilot area
23 is effective. The applicable period of a designated pilot area may
24 be extended, in the sole discretion of the Governor’s Office of
25 Business and Economic Development, for an additional period of
26 up to three calendar years. The applicable period, and any extended
27 period, shall not extend beyond December 31, 2020.

28 (III) The designation of an area as a designated pilot area and
29 the extension of the applicable period of a designated pilot area
30 shall be at the sole discretion of the Governor’s Office of Business
31 and Economic Development and shall not be subject to
32 administrative appeal or judicial review.

33 (B) Wages paid or incurred during the 60-month period
34 beginning with the first day the qualified full-time employee
35 commences employment with the qualified taxpayer. In the case
36 of any employee who is reemployed, including a regularly
37 occurring seasonal increase, in the trade or business operations of
38 the qualified taxpayer, this reemployment shall not be treated as
39 constituting commencement of employment for purposes of this
40 section.

1 (C) Except as provided in paragraph (3) of subdivision (n),
2 qualified wages shall not include any wages paid or incurred by
3 the qualified taxpayer on or after the date that the Department of
4 Finance's redesignation of designated census tracts is effective,
5 as provided in paragraph (2) of subdivision (g), so that a census
6 tract is no longer a designated census tract.

7 (13) "Seasonal employment" means employment by a qualified
8 taxpayer that has regular and predictable substantial reductions in
9 trade or business operations.

10 (14) (A) "Small business" means a trade or business that has
11 aggregate gross receipts, less returns and allowances reportable to
12 this state, of less than two million dollars (\$2,000,000) during the
13 previous taxable year.

14 (B) (i) For purposes of this paragraph, "gross receipts, less
15 returns and allowances reportable to this state," means the sum of
16 the gross receipts from the production of business income, as
17 defined in subdivision (a) of Section 25120, and the gross receipts
18 from the production of nonbusiness income, as defined in
19 subdivision (d) of Section 25120.

20 (ii) In the case of any trade or business activity conducted by a
21 partnership or an "S" corporation, the limitations set forth in
22 subparagraph (A) shall be applied to the partnership or "S"
23 corporation and to each partner or shareholder.

24 (C) (i) "Small business" shall not include a sexually oriented
25 business.

26 (ii) For purposes of this subparagraph:

27 (I) "Sexually oriented business" means a nightclub, bar,
28 restaurant, or similar commercial enterprise that provides for an
29 audience of two or more individuals live nude entertainment or
30 live nude performances where the nudity is a function of everyday
31 business operations and where nudity is a planned and intentional
32 part of the entertainment or performance.

33 (II) "Nude" means clothed in a manner that leaves uncovered
34 or visible, through less than fully opaque clothing, any portion of
35 the genitals or, in the case of a female, any portion of the breasts
36 below the top of the areola of the breasts.

37 (15) An individual is "unemployed" for any period for which
38 the individual is all of the following:

39 (A) Not in receipt of wages subject to withholding under Section
40 13020 of the Unemployment Insurance Code for that period.

1 (B) Not a self-employed individual (within the meaning of
2 Section 401(c)(1)(B) of the Internal Revenue Code, relating to
3 self-employed individual) for that period.

4 (C) Not a registered full-time student at a high school, college,
5 university, or other postsecondary educational institution for that
6 period.

7 (c) The net increase in full-time employees of a qualified
8 taxpayer shall be determined as provided by this subdivision:

9 (1) (A) The net increase in full-time employees shall be
10 determined on an annual full-time equivalent basis by subtracting
11 from the amount determined in subparagraph (C) the amount
12 determined in subparagraph (B).

13 (B) The total number of full-time employees employed in the
14 base year by the taxpayer and by any trade or business acquired
15 by the taxpayer during the current taxable year.

16 (C) The total number of full-time employees employed in the
17 current taxable year by the taxpayer and by any trade or business
18 acquired during the current taxable year.

19 (2) For taxpayers who first commence doing business in this
20 state during the taxable year, the number of full-time employees
21 for the base year shall be zero.

22 (d) For purposes of this section:

23 (1) All employees of the trades or businesses that are treated as
24 related under Section 267, 318, or 707 of the Internal Revenue
25 Code shall be treated as employed by a single taxpayer.

26 (2) In determining whether the taxpayer has first commenced
27 doing business in this state during the taxable year, the provisions
28 of subdivision (f) of Section 17276.20, without application of
29 paragraph (7) of that subdivision, shall apply.

30 (e) (1) To be eligible for the credit allowed by this section, a
31 qualified taxpayer shall, upon hiring a qualified full-time employee,
32 request a tentative credit reservation from the Franchise Tax Board
33 within 30 days of complying with the Employment Development
34 Department's new hire reporting requirements as provided in
35 Section 1088.5 of the Unemployment Insurance Code, in the form
36 and manner prescribed by the Franchise Tax Board.

37 (2) To obtain a tentative credit reservation with respect to a
38 qualified full-time employee, the qualified taxpayer shall provide
39 necessary information, as determined by the Franchise Tax Board,
40 including the name, social security number, the start date of

1 employment, the rate of pay of the qualified full-time employee,
2 the qualified taxpayer's gross receipts, less returns and allowances,
3 for the previous taxable year, and whether the qualified full-time
4 employee is a resident of a targeted employment area, as defined
5 in former Section 7072 of the Government Code, as in effect on
6 December 31, 2013.

7 (3) The qualified taxpayer shall provide the Franchise Tax Board
8 an annual certification of employment with respect to each
9 qualified full-time employee hired in a previous taxable year, on
10 ~~or before~~, *before* the 15th day of the third month of the taxable
11 year. The certification shall include necessary information, as
12 determined by the Franchise Tax Board, including the name, social
13 security number, start date of employment, and rate of pay for each
14 qualified full-time employee employed by the qualified taxpayer.

15 (4) A tentative credit reservation provided to a taxpayer with
16 respect to an employee of that taxpayer shall not constitute a
17 determination by the Franchise Tax Board with respect to any of
18 the requirements of this section regarding a taxpayer's eligibility
19 for the credit authorized by this section.

20 (f) The Franchise Tax Board shall do all of the following:

21 (1) Approve a tentative credit reservation with respect to a
22 qualified full-time employee hired during a calendar year.

23 (2) Determine the aggregate tentative reservation amount and
24 the aggregate small business tentative reservation amount for a
25 calendar year.

26 (3) A tentative credit reservation request from a qualified
27 taxpayer with respect to a qualified full-time employee who is a
28 resident of a targeted employment area, as defined in former
29 Section 7072 of the Government Code, as in effect on December
30 31, 2013, shall be expeditiously processed by the Franchise Tax
31 Board. The residence of a qualified full-time employee in a targeted
32 employment area shall have no other effect on the eligibility of an
33 individual as a qualified full-time employee or the eligibility of a
34 qualified taxpayer for the credit authorized by this section.

35 (4) Notwithstanding Section 19542, provide as a searchable
36 database on its Internet Web site, for each taxable year beginning
37 on or after January 1, 2014, and before January 1, 2021, the
38 employer names, amounts of tax credit claimed, and number of
39 new jobs created for each taxable year pursuant to this section and
40 Section 23626.

(g) (1) The Department of Finance shall, by January 1, 2014, and by January 1 of every fifth year thereafter, provide the Franchise Tax Board with a list of the designated census tracts and a list of census tracts with the lowest civilian unemployment rate.

(2) The redesignation of designated census tracts and lowest civilian unemployment census tracts by the Department of Finance as provided in Section 13073.5 of the Government Code shall be effective, for purposes of this credit, one year after the date *that* the Department of Finance redesignates the designated census tracts.

(h) For purposes of this section:

(1) All employees of the trades or businesses that are treated as related under Section 267, 318, or 707 of the Internal Revenue Code shall be treated as employed by a single taxpayer.

(2) All employees of trades or businesses that are not incorporated, and that are under common control, shall be treated as employed by a single taxpayer.

(3) The credit, if any, allowable by this section with respect to each trade or business shall be determined by reference to its proportionate share of the expense of the qualified wages giving rise to the credit, and shall be allocated to that trade or business in that manner.

(4) Principles that apply in the case of controlled groups of corporations, as specified in subdivision (h) of Section 23626, shall apply with respect to determining employment.

(5) If an employer acquires the major portion of a trade or business of another employer, hereinafter in this paragraph referred to as the predecessor, or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section, other than subdivision (i), for any taxable year ending after that acquisition, the employment relationship between a qualified full-time employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(i) (1) If the employment of any qualified full-time employee, with respect to whom qualified wages are taken into account under subdivision (a), is terminated by the qualified taxpayer at any time during the first 36 months after commencing employment with the qualified taxpayer, whether or not consecutive, the tax imposed by this part for the taxable year in which that employment is

1 terminated shall be increased by an amount equal to the credit
2 allowed under subdivision (a) for that taxable year and all prior
3 taxable years attributable to qualified wages paid or incurred with
4 respect to that employee.

5 (2) Paragraph (1) shall not apply to any of the following:

6 (A) A termination of employment of a qualified full-time
7 employee who voluntarily leaves the employment of the qualified
8 taxpayer.

9 (B) A termination of employment of a qualified full-time
10 employee who, before the close of the period referred to in
11 paragraph (1), becomes disabled and unable to perform the services
12 of that employment, unless that disability is removed before the
13 close of that period and the qualified taxpayer fails to offer
14 reemployment to that employee.

15 (C) A termination of employment of a qualified full-time
16 employee, if it is determined that the termination was due to the
17 misconduct, as defined in Sections 1256-30 to 1256-43, inclusive,
18 of Title 22 of the California Code of Regulations, of that employee.

19 (D) A termination of employment of a qualified full-time
20 employee due to a substantial reduction in the trade or business
21 operations of the qualified taxpayer, including reductions due to
22 seasonal employment.

23 (E) A termination of employment of a qualified full-time
24 employee, if that employee is replaced by other qualified full-time
25 employees so as to create a net increase in both the number of
26 employees and the hours of employment.

27 (F) A termination of employment of a qualified full-time
28 employee, when that employment is considered seasonal
29 employment and the qualified employee is rehired on a seasonal
30 basis.

31 (3) For purposes of paragraph (1), the employment relationship
32 between the qualified taxpayer and a qualified full-time employee
33 shall not be treated as terminated by reason of a mere change in
34 the form of conducting the trade or business of the qualified
35 taxpayer, if the qualified full-time employee continues to be
36 employed in that trade or business and the qualified taxpayer retains
37 a substantial interest in that trade or business.

38 (4) Any increase in tax under paragraph (1) shall not be treated
39 as tax imposed by this part for purposes of determining the amount
40 of any credit allowable under this part.

(j) In the case of an estate or trust, both of the following apply:

(1) The qualified wages for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

(2) Any beneficiary to whom any qualified wages have been apportioned under paragraph (1) shall be treated, for purposes of this part, as the employer with respect to those wages.

(k) In the case where the credit allowed by this section exceeds the “net tax,” the excess may be carried over to reduce the “net tax” in the following year, and the succeeding four years if necessary, until the credit is exhausted.

(l) The Franchise Tax Board may prescribe rules, guidelines, or procedures necessary or appropriate to carry out the purposes of this section, including any guidelines regarding the allocation of the credit allowed under this section. Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any rule, guideline, or procedure prescribed by the Franchise Tax Board pursuant to this section.

(m) (1) Upon the effective date of this section, the Department of Finance shall estimate the total dollar amount of credits that will be claimed under this section with respect to each fiscal year from the 2013–14 fiscal year to the 2020–21 fiscal year, inclusive.

(2) The Franchise Tax Board shall annually provide to the Joint Legislative Budget Committee, by no later than March 1, a report of the total dollar amount of the credits claimed under this section with respect to the relevant fiscal year. The report shall compare the total dollar amount of credits claimed under this section with respect to that fiscal year with the department’s estimate with respect to that same fiscal year. If the total dollar amount of credits claimed for the fiscal year is less than the estimate for that fiscal year, the report shall identify options for increasing annual claims of the credit so as to meet estimated amounts.

(n) (1) This section shall remain in effect only until December 1, 2024, and as of that date is repealed.

(2) Notwithstanding paragraph (1) of subdivision (a), this section shall continue to be operative for taxable years beginning on or after January 1, 2021, but only with respect to qualified full-time employees who commenced employment with a qualified taxpayer

1 in a designated census tract or economic development area in a
2 taxable year beginning before January 1, 2021.

3 (3) This section shall remain operative for any qualified taxpayer
4 with respect to any qualified full-time employee after the
5 designated census tract is no longer designated or an economic
6 development area ceases to be an economic development area, as
7 defined in this section, for the remaining period, if any, of the
8 60-month period after the original date of hiring of an otherwise
9 qualified full-time employee and any wages paid or incurred with
10 respect to those qualified full-time employees after the designated
11 census tract is no longer designated or an economic development
12 area ceases to be an economic development area, as defined in this
13 section, shall be treated as qualified wages under this section,
14 provided the employee satisfies any other requirements of
15 paragraphs (10) and (12) of subdivision (b), as if the designated
16 census tract was still designated and binding or the economic
17 development area was still in existence.

18 SEC. 2. Section 23626 of the Revenue and Taxation Code is
19 amended to read:

20 23626. (a) (1) For each taxable year beginning on or after
21 January 1, 2014, and before January 1, 2021, there shall be allowed
22 to a qualified taxpayer that hires a qualified full-time employee
23 and pays or incurs qualified wages attributable to work performed
24 by the qualified full-time employee in a designated census tract
25 or economic development area, and that receives a tentative credit
26 reservation for that qualified full-time employee, a credit against
27 the "tax," as defined by Section 23036, in an amount calculated
28 under this section.

29 (2) The amount of the credit allowable under this section for a
30 taxable year shall be equal to the product of the tentative credit
31 amount for the taxable year and the applicable percentage for the
32 taxable year.

33 (3) (A) If a qualified taxpayer relocates to a designated census
34 tract or economic development area, the qualified taxpayer shall
35 be allowed a credit with respect to qualified wages for each
36 qualified full-time employee who is employed within the new
37 location only if the qualified taxpayer provides each employee at
38 the previous location or locations a written offer of employment
39 at the new location in the designated census tract or economic
40 development area with comparable compensation.

(B) For purposes of this paragraph, “relocates to a designated census tract or economic development area” means an increase in the number of qualified full-time employees, employed by a qualified taxpayer, within a designated census tract or tracts or economic development areas within a 12-month period in which there is a decrease in the number of full-time employees, employed by the qualified taxpayer in this state, but outside of designated census tracts or economic development areas.

(C) This paragraph shall not apply to a small business.

(4) The credit allowed by this section may ~~only~~ be claimed *only* on a timely filed original return of the qualified taxpayer and only with respect to a qualified full-time employee for whom the qualified taxpayer has received a tentative credit reservation.

(b) For purposes of this section:

(1) The “tentative credit amount” for a taxable year shall be equal to the product of the applicable credit percentage for each qualified full-time employee and the qualified wages paid by the qualified taxpayer during the taxable year to that qualified full-time employee.

(2) The “applicable percentage” for a taxable year shall be equal to a fraction, the numerator of which is the net increase in the total number of full-time employees employed in this state during the taxable year, determined on an annual full-time equivalent basis, as compared with the total number of full-time employees employed in this state during the base year, determined on the same basis, and the denominator of which shall be the total number of qualified full-time employees employed in this state during the taxable year. The applicable percentage shall not exceed 100 percent.

(3) The “applicable credit percentage” means the credit percentage for the calendar year during which a qualified full-time employee was first employed by the qualified taxpayer. The applicable credit percentage for all calendar years shall be 35 percent.

(4) “Base year” means the 2013 taxable year, ~~or except~~ in the case of a qualified taxpayer who first hires a qualified full-time employee in a taxable year beginning on or after January 1, 2015, the *base year means the* taxable year immediately preceding the taxable year in which the qualified full-time employee was ~~hired~~ *first hired by the qualified taxpayer*.

1 (5) “Acquired” includes any gift, inheritance, transfer incident
2 to divorce, or any other transfer, whether or not for consideration.

3 (6) “Annual full-time equivalent” means either of the following:

4 (A) In the case of a full-time employee paid hourly qualified
5 wages, “annual full-time equivalent” means the total number of
6 hours worked for the qualified taxpayer by the ~~employee (not~~
7 ~~employee, not~~ to exceed 2,000 hours per ~~employee~~ employee,
8 divided by 2,000.

9 (B) In the case of a salaried full-time employee, “annual
10 full-time equivalent” means the total number of weeks worked for
11 the qualified taxpayer by the employee divided by 52.

12 (7) “Designated census tract” means a census tract within the
13 state that is determined by the Department of Finance to have a
14 civilian unemployment rate that is within the top 25 percent of all
15 census tracts within the state and has a poverty rate within the top
16 25 percent of all census tracts within the state, as prescribed in
17 Section 13073.5 of the Government Code.

18 (8) “Economic development area” means either of the following:

19 (A) A former enterprise zone. For purposes of this section,
20 “former enterprise zone” means an enterprise zone designated and
21 in effect as of December 31, 2011, any enterprise zone designated
22 during 2012, and any revision of an enterprise zone prior to June
23 30, 2013, under former Chapter 12.8 (commencing with Section
24 7070) of Division 7 of Title 1 of the Government Code, as in effect
25 on December 31, 2012, excluding any census tract within an
26 enterprise zone that is identified by the Department of Finance
27 pursuant to Section 13073.5 of the Government Code as a census
28 tract within the lowest quartile of census tracts with the lowest
29 civilian unemployment and poverty.

30 (B) A local agency military base recovery area designated as
31 of the effective date of the act adding this subparagraph, in
32 accordance with Section 7114 of the Government Code.

33 (9) “Minimum wage” means the wage established pursuant to
34 Chapter 1 (commencing with Section 1171) of Part 4 of Division
35 2 of the Labor Code.

36 (10) (A) “Qualified full-time employee” means an individual
37 who meets all of the following requirements:

38 (i) Performs at least 50 percent of his or her services for the
39 qualified taxpayer during the taxable year in a designated census
40 tract or economic development area.

- 1 (ii) Receives starting wages that are at least 150 percent of the
2 minimum wage.
- 3 (iii) Is hired by the qualified taxpayer on or after January 1,
4 2014.
- 5 (iv) Is hired by the qualified taxpayer after the date the
6 Department of Finance determines that the census tract referred
7 to in clause (i) is a designated census tract or that the census tracts
8 within a former enterprise zone are not census tracts with the lowest
9 civilian unemployment and poverty.
- 10 (v) Satisfies either of the following conditions:
- 11 (I) Is paid qualified wages by the qualified taxpayer for services
12 not less than an average of 35 hours per week.
- 13 (II) Is a salaried employee and was paid compensation during
14 the taxable year for full-time employment, within the meaning of
15 Section 515 of the Labor Code, by the qualified taxpayer.
- 16 (vi) Upon commencement of employment with the qualified
17 taxpayer, satisfies any of the following conditions:
- 18 (I) Was unemployed for the six months immediately preceding
19 employment with the qualified taxpayer. In the case of an
20 individual who completed a program of study at a college,
21 university, or other postsecondary educational institution, received
22 a baccalaureate, postgraduate, or professional degree, and was
23 unemployed for the six months immediately preceding employment
24 with the qualified taxpayer, that individual must have completed
25 that program of study at least 12 months prior to the individual's
26 commencement of employment with the qualified taxpayer.
- 27 (II) (ia) For ~~taxable years~~ *each taxable year* beginning on or
28 after January 1, 2014, and before January 1, ~~2015, 2016~~, is a
29 veteran who separated from service in the Armed Forces of the
30 United States within the 12 months preceding commencement of
31 employment with the qualified taxpayer.
- 32 (ib) For ~~taxable years~~ *each taxable year* beginning on or after
33 January 1, ~~2015, 2016~~, is a veteran who separated from service in
34 the Armed Forces of the United States within the ~~24~~ 36 months
35 preceding commencement of employment with the qualified
36 taxpayer.
- 37 (III) Was a recipient of the credit allowed under Section 32 of
38 the Internal Revenue Code, relating to earned income, as applicable
39 for federal purposes, for the previous taxable year.
- 40 (IV) Is an ex-offender previously convicted of a felony.

1 (V) Is a recipient of either CalWORKs, in accordance with
2 Article 2 (commencing with Section 11250) of Chapter 2 of Part
3 3 of Division 9 of the Welfare and Institutions Code, or general
4 assistance, in accordance with Section 17000.5 of the Welfare and
5 Institutions Code.

6 (B) An individual may ~~only~~ be considered a qualified full-time
7 employee *only* for the period of time commencing with the date
8 the individual is first employed by the qualified taxpayer and
9 ending 60 months thereafter.

10 (11) (A) “Qualified taxpayer” means a corporation engaged in
11 a trade or business within a designated census tract or economic
12 development area that, during the taxable year, pays or incurs
13 qualified wages.

14 (B) In the case of any pass-thru entity, the determination of
15 whether a taxpayer is a qualified taxpayer under this section shall
16 be made at the entity level and any credit under this section or
17 Section 17053.73 shall be allowed to the pass-thru entity and
18 passed through to the partners and shareholders in accordance with
19 applicable provisions of this part or Part 10 (commencing with
20 Section 17001). For purposes of this subdivision, the term
21 “pass-thru entity” means any partnership or “S” corporation.

22 (C) “~~Qualified taxpayer~~ taxpayers” shall not include any of
23 the following:

24 (i) Employers that provide temporary help services, as described
25 in Code 561320 of the North American Industry Classification
26 System (NAICS) published by the United States Office of
27 Management and Budget, 2012 edition.

28 (ii) Employers that provide retail trade services, as described
29 in Sector 44-45 of the North American Industry Classification
30 System (NAICS) published by the United States Office of
31 Management and Budget, 2012 edition.

32 (iii) Employers that are primarily engaged in providing food
33 services, as described in Code 711110, 722511, 722513, 722514,
34 or 722515 of the North American Industry Classification System
35 (NAICS) published by the United States Office of Management
36 and Budget, 2012 edition.

37 (iv) Employers that are primarily engaged in services as
38 described in Code 713210, 721120, or 722410 of the North
39 American Industry Classification System (NAICS) published by
40 the United States Office of Management and Budget, 2012 edition.

1 (v) (I) An employer that is a sexually oriented business.

2 (II) For purposes of this clause:

3 ~~(aa)~~

4 (ia) “Sexually oriented business” means a nightclub, bar,
5 restaurant, or similar commercial enterprise that provides for an
6 audience of two or more individuals live nude entertainment or
7 live nude performances where the nudity is a function of everyday
8 business operations and where nudity is a planned and intentional
9 part of the entertainment or performance.

10 ~~(ab)~~

11 (ib) “Nude” means clothed in a manner that leaves uncovered
12 or visible, through less than fully opaque clothing, any portion of
13 the genitals or, in the case of a female, any portion of the breasts
14 below the top of the areola of the breasts.

15 (D) Subparagraph (C) shall not apply to a taxpayer that is a
16 “small business.”

17 (12) “Qualified wages” means those wages that meet all of the
18 following requirements:

19 (A) (i) Except as provided in clause (ii), that portion of wages
20 paid or incurred by the qualified taxpayer during the taxable year
21 to each qualified full-time employee that exceeds 150 percent of
22 *the* minimum wage, but does not exceed 350 percent of the
23 minimum wage.

24 (ii) (I) In the case of a qualified full-time employee employed
25 in a designated pilot area, that portion of wages paid or incurred
26 by the qualified taxpayer during the taxable year to each qualified
27 full-time employee that exceeds ten dollars (\$10) per hour or an
28 equivalent amount for salaried employees, but does not exceed
29 350 percent of the minimum wage. For qualified full-time
30 employees described in the preceding sentence, clause (ii) of
31 subparagraph (A) of paragraph (10) is modified by substituting
32 “ten dollars (\$10) per hour or an equivalent amount for salaried
33 employees” for “150 percent of the minimum wage.”

34 (II) For purposes of this clause:

35 ~~(aa)~~

36 (ia) “Designated pilot area” means an area designated as a
37 designated pilot area by the Governor’s Office of Business and
38 Economic Development.

39 ~~(ab)~~

1 ~~(ib)~~ Areas that may be designated as a designated pilot area are
2 limited to areas within a designated census tract or an economic
3 development area with average wages less than the statewide
4 average wages, based on information from the Labor Market
5 Division of the Employment Development Department, and areas
6 within a designated census tract or an economic development area
7 based on high poverty or high unemployment.

8 ~~(ae)~~

9 ~~(ic)~~ The total number of designated pilot areas that may be
10 designated is limited to five, one or more of which must be an area
11 within five or fewer designated census tracts within a single county
12 based on high poverty or high unemployment or an area within an
13 economic development area based on high poverty or high
14 unemployment.

15 ~~(ad)~~

16 ~~(id)~~ The designation of a designated pilot area shall be applicable
17 for a period of four calendar years, commencing with the first
18 calendar year for which the designation of a designated pilot area
19 is effective. The applicable period of a designated pilot area may
20 be extended, in the sole discretion of the Governor's Office of
21 Business and Economic Development, for an additional period of
22 up to three calendar years. The applicable period, and any extended
23 period, shall not extend beyond December 31, 2020.

24 (III) The designation of an area as a designated pilot area and
25 the extension of the applicable period of a designated pilot area
26 shall be at the sole discretion of the Governor's Office of Business
27 and Economic Development and shall not be subject to
28 administrative appeal or judicial review.

29 (B) Wages paid or incurred during the 60-month period
30 beginning with the first day the qualified full-time employee
31 commences employment with the qualified taxpayer. In the case
32 of any employee who is reemployed, including *a* regularly
33 occurring seasonal increase, in the trade or business operations of
34 the qualified taxpayer, this reemployment shall not be treated as
35 constituting commencement of employment for purposes of this
36 section.

37 (C) Except as provided in paragraph (3) of subdivision (m),
38 qualified wages shall not include any wages paid or incurred by
39 the qualified taxpayer on or after the date that the Department of
40 Finance's redesignation of designated census tracts is effective,

1 as provided in paragraph (2) of subdivision (g), so that a census
2 tract is no longer ~~determined to be~~ a designated census tract.

3 (13) “Seasonal employment” means employment by a qualified
4 taxpayer that has regular and predictable substantial reductions in
5 trade or business operations.

6 (14) (A) “Small business” means a trade or business that has
7 aggregate gross receipts, less returns and allowances reportable to
8 this state, of less than two million dollars (\$2,000,000) during the
9 previous taxable year.

10 (B) (i) For purposes of this paragraph, “gross receipts, less
11 returns and allowances reportable to this state,” means the sum of
12 the gross receipts from the production of business income, as
13 defined in subdivision (a) of Section 25120, and the gross receipts
14 from the production of nonbusiness income, as defined in
15 subdivision (d) of Section 25120.

16 (ii) In the case of any trade or business activity conducted by a
17 partnership or an “S” corporation, the limitations set forth in
18 subparagraph (A) shall be applied to the partnership or “S”
19 corporation and to each partner or shareholder.

20 (iii) For taxpayers that are required to be included in a combined
21 report under Section 25101 or authorized to be included in a
22 combined report under Section 25101.15, the dollar amount
23 specified in subparagraph (A) shall apply to the aggregate gross
24 receipts of all taxpayers that are required to be or authorized to be
25 included in a combined report.

26 (C) (i) “Small business” shall not include a sexually oriented
27 business.

28 (ii) For purposes of this subparagraph:

29 (I) “Sexually oriented business” means a nightclub, bar,
30 restaurant, or similar commercial enterprise that provides for an
31 audience of two or more individuals live nude entertainment or
32 live nude performances where the nudity is a function of everyday
33 business operations and where nudity is a planned and intentional
34 part of the entertainment or performance.

35 (II) “Nude” means clothed in a manner that leaves uncovered
36 or visible, through less than fully opaque clothing, any portion of
37 the genitals or, in the case of a female, any portion of the breasts
38 below the top of the areola of the breasts.

39 (15) An individual is “unemployed” for any period for which
40 the individual is all of the following:

1 (A) Not in receipt of wages subject to withholding under Section
2 13020 of the Unemployment Insurance Code for that period.

3 (B) Not a self-employed individual (within the meaning of
4 Section 401(c)(1)(B) of the Internal Revenue Code, relating to
5 self-employed individual) for that period.

6 (C) Not a registered full-time student at a high school, college,
7 university, or other postsecondary educational institution for that
8 period.

9 (c) The net increase in full-time employees of a qualified
10 taxpayer shall be determined as provided by this subdivision:

11 (1) (A) The net increase in full-time employees shall be
12 determined on an annual full-time equivalent basis by subtracting
13 from the amount determined in subparagraph (C) the amount
14 determined in subparagraph (B).

15 (B) The total number of full-time employees employed in the
16 base year by the taxpayer and by any trade or business acquired
17 by the taxpayer during the current taxable year.

18 (C) The total number of full-time employees employed in the
19 current taxable year by the taxpayer and by any trade or business
20 acquired during the current taxable year.

21 (2) For taxpayers who first commence doing business in this
22 state during the taxable year, the number of full-time employees
23 for the base year shall be zero.

24 (d) For purposes of this section:

25 (1) All employees of the trades or businesses that are treated as
26 related under Section 267, 318, or 707 of the Internal Revenue
27 Code shall be treated as employed by a single taxpayer.

28 (2) In determining whether the taxpayer has first commenced
29 doing business in this state during the taxable year, the provisions
30 of subdivision (g) of Section 24416.20, without application of
31 paragraph (7) of that subdivision, shall apply.

32 (e) (1) To be eligible for the credit allowed by this section, a
33 qualified taxpayer shall, upon hiring a qualified full-time employee,
34 request a tentative credit reservation from the Franchise Tax Board
35 within 30 days of complying with the Employment Development
36 Department's new hire reporting ~~requirement~~ *requirements* as
37 provided in Section 1088.5 of the Unemployment Insurance Code,
38 in the form and manner prescribed by the Franchise Tax Board.

39 (2) To obtain a tentative credit reservation with respect to a
40 qualified full-time employee, the qualified taxpayer shall provide

1 necessary information, as determined by the Franchise Tax Board,
2 including the name, ~~the~~ social security number, the start date of
3 employment, the rate of pay of the qualified full-time employee,
4 the qualified taxpayer's gross receipts, less returns and allowances,
5 for the previous taxable year, and whether the qualified full-time
6 employee is a resident of a targeted employment area, as defined
7 in former Section 7072 of the Government Code, as in effect on
8 December 31, 2013.

9 (3) The qualified taxpayer shall provide the Franchise Tax Board
10 an annual certification of employment with respect to each
11 qualified full-time employee ~~hire~~ *hired* in a previous taxable year,
12 on or before the 15th day of the third month of the taxable year.
13 The certification shall include necessary information, as determined
14 by the Franchise Tax Board, including the name, social security
15 number, start date of employment, and rate of pay for each qualified
16 full-time employee employed by the qualified taxpayer.

17 (4) A tentative credit reservation provided to a taxpayer with
18 respect to an employee of that taxpayer shall not constitute a
19 determination by the Franchise Tax Board with respect to any of
20 the requirements of this section regarding a taxpayer's eligibility
21 for the credit authorized by this section.

22 (f) The Franchise Tax Board shall do all of the following:

23 (1) Approve a tentative credit reservation with respect to a
24 qualified full-time employee hired during a calendar year.

25 (2) Determine the aggregate tentative reservation amount and
26 the aggregate small business tentative reservation amount for a
27 calendar year.

28 (3) A tentative credit reservation request from a qualified
29 taxpayer with respect to a qualified full-time employee who is a
30 resident of a targeted employment area, as defined in former
31 Section 7072 of the Government Code, as in effect on December
32 31, 2013, shall be expeditiously processed by the Franchise Tax
33 Board. The residence of a qualified full-time employee in a targeted
34 employment area shall have no other effect on the eligibility of an
35 individual as a qualified full-time employee or the eligibility of a
36 qualified taxpayer for the credit authorized by this section.

37 (4) Notwithstanding Section 19542, provide as a searchable
38 database on its Internet Web site, for each taxable year beginning
39 on or after January 1, 2014, and before January 1, 2021, the
40 employer names, amounts of tax credit claimed, and number of

1 new jobs created for each taxable year pursuant to this section and
2 Section 17053.73.

3 (g) (1) The Department of Finance shall, by January 1, 2014,
4 and by January 1 of every fifth year thereafter, provide the
5 Franchise Tax Board with a list of the designated census tracts and
6 a list of census tracts with the lowest civilian unemployment rate.

7 (2) The redesignation of designated census tracts and lowest
8 civilian unemployment census tracts by the Department of Finance
9 as provided in Section 13073.5 of the Government Code shall be
10 effective, for purposes of this credit, one year after the date that
11 the Department of Finance redesignates the designated census
12 tracts.

13 (h) (1) For purposes of this section:

14 (A) All employees of the trades or businesses that are treated
15 as related under Section 267, 318, or 707 of the Internal Revenue
16 Code shall be treated as employed by a single qualified taxpayer.

17 (B) All employees of all corporations that are members of the
18 same controlled group of corporations shall be treated as employed
19 by a single qualified taxpayer.

20 (C) The credit, if any, allowable by this section to each member
21 shall be determined by reference to its proportionate share of the
22 expense of the qualified wages giving rise to the credit, and shall
23 be allocated in that manner.

24 (D) If a qualified taxpayer acquires the major portion of a trade
25 or business of another taxpayer, hereinafter in this paragraph
26 referred to as the predecessor, or the major portion of a separate
27 unit of a trade or business of a predecessor, then, for purposes of
28 applying this section for any taxable year ending after that
29 acquisition, the employment relationship between a qualified
30 full-time employee and a qualified taxpayer shall not be treated
31 as terminated if the employee continues to be employed in that
32 trade or business.

33 (2) For purposes of this subdivision, “controlled group of
34 corporations” means a controlled group of corporations as defined
35 in Section 1563(a) of the Internal Revenue Code, except that:

36 (A) “More than 50 percent” shall be substituted for “at least 80
37 percent” each place it appears in Section 1563(a)(1) of the Internal
38 Revenue Code.

1 (B) The determination shall be made without regard to
2 subsections (a)(4) and (e)(3)(C) of Section 1563 of the Internal
3 Revenue Code.

4 (3) Rules similar to the rules provided in Sections 46(e) and
5 46(h) of the Internal Revenue Code, as in effect on November 4,
6 1990, shall apply to both of the following:

7 (A) An organization to which Section 593 of the Internal
8 Revenue Code applies.

9 (B) A regulated investment company or a real estate investment
10 trust subject to taxation under this part.

11 (i) (1) If the employment of any qualified full-time employee,
12 with respect to whom qualified wages are taken into account under
13 subdivision (a), is terminated by the qualified taxpayer at any time
14 during the first 36 months after commencing employment with
15 the qualified taxpayer, whether or not consecutive, the tax imposed
16 by this part for the taxable year in which that employment is
17 terminated shall be increased by an amount equal to the credit
18 allowed under subdivision (a) for that taxable year and all prior
19 taxable years attributable to qualified wages paid or incurred with
20 respect to that employee.

21 (2) Paragraph (1) shall not apply to any of the following:

22 (A) A termination of employment of a qualified full-time
23 employee who voluntarily leaves the employment of the qualified
24 taxpayer.

25 (B) A termination of employment of a qualified full-time
26 employee who, before the close of the period referred to in
27 paragraph (1), becomes disabled and unable to perform the services
28 of that employment, unless that disability is removed before the
29 close of that period and the qualified taxpayer fails to offer
30 reemployment to that employee.

31 (C) A termination of employment of a qualified full-time
32 employee, if it is determined that the termination was due to the
33 misconduct, as defined in Sections 1256-30 to 1256-43, inclusive,
34 of Title 22 of the California Code of Regulations, of that employee.

35 (D) A termination of employment of a qualified full-time
36 employee due to a substantial reduction in the trade or business
37 operations of the qualified taxpayer, including reductions due to
38 seasonal employment.

39 (E) A termination of employment of a qualified full-time
40 employee, if that employee is replaced by other qualified full-time

1 employees so as to create a net increase in both the number of
2 employees and the hours of employment.

3 (F) A termination of employment of a qualified full-time
4 employee, when that employment is considered seasonal
5 employment and the qualified employee is rehired on a seasonal
6 basis.

7 (3) For purposes of paragraph (1), the employment relationship
8 between the qualified taxpayer and a qualified full-time employee
9 shall not be treated as terminated by reason of a mere change in
10 the form of conducting the trade or business of the qualified
11 taxpayer, if the qualified full-time employee continues to be
12 employed in that trade or business and the qualified taxpayer retains
13 a substantial interest in that trade or business.

14 (4) Any increase in tax under paragraph (1) shall not be treated
15 as tax imposed by this part for purposes of determining the amount
16 of any credit allowable under this part.

17 (j) In the case where the credit allowed by this section exceeds
18 the “tax,” the excess may be carried over to reduce the “tax” in
19 the following year, and the succeeding four years if necessary,
20 until *the credit is* exhausted.

21 (k) The Franchise Tax Board may prescribe rules, guidelines,
22 or procedures necessary or appropriate to carry out the purposes
23 of this section, including any guidelines regarding the allocation
24 of the credit allowed under this section. Chapter 3.5 (commencing
25 with Section 11340) of Part 1 of Division 3 of Title 2 of the
26 Government Code shall not apply to any rule, guideline, or
27 procedure prescribed by the Franchise Tax Board pursuant to this
28 section.

29 (l) (1) Upon the effective date of this section, the Department
30 of Finance shall estimate the total dollar amount of credits that
31 will be claimed under this section with respect to each fiscal year
32 from the 2013–14 fiscal year to the 2020–21 fiscal year, inclusive.

33 (2) The Franchise Tax Board shall annually provide to the Joint
34 Legislative Budget Committee, by no later than March 1, a report
35 of the total dollar amount of the credits claimed under this section
36 with respect to the relevant fiscal year. The report shall compare
37 the total dollar amount of credits claimed under this section with
38 respect to that fiscal year with the department’s estimate with
39 respect to that same fiscal year. If the total dollar amount of credits
40 claimed for the fiscal year is less than the estimate for that fiscal

1 year, the report shall identify options for increasing annual claims
2 of the credit so as to meet estimated amounts.

3 (m) (1) This section shall remain in effect only until December
4 1, 2024, and as of that date is repealed.

5 (2) Notwithstanding paragraph (1) of subdivision (a), this section
6 shall continue to be operative for taxable years beginning on or
7 after January 1, 2021, but only with respect to qualified full-time
8 employees who commenced employment with a qualified taxpayer
9 in a designated census tract or economic development area in a
10 taxable year beginning before January 1, 2021.

11 (3) This section shall remain operative for any qualified taxpayer
12 with respect to any qualified full-time employee after the
13 designated census tract is no longer designated or an economic
14 development area ceases to be an economic development area, as
15 defined in this section, for the remaining period, if any, of the
16 60-month period after the original date of hiring of an otherwise
17 qualified full-time employee and any wages paid or incurred with
18 respect to those qualified full-time employees after the designated
19 census tract is no longer designated or an economic development
20 area ceases to be an economic development area, as defined in this
21 section, shall be treated as qualified wages under this section,
22 provided the employee satisfies any other requirements of
23 paragraphs (10) and (12) of subdivision (b), as if the designated
24 census tract was still designated and binding or the economic
25 development area was still in existence.

26 SEC. 3. This act provides for a tax levy within the meaning of
27 Article IV of the Constitution and shall go into immediate effect.